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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 327 OF 1997

Union of India . . . Applicant

Vs.

M/s. Bharat Laboratories & Ors. Respondents

Mr. R. V. Desai with H.V. Mehta, advocates for the applicant.

AND

CRIMINAL REVISION APPLICATION No. 98 OF 1998

Union of India . . . Applicant

Vs.

Sudhir Laxman Hendre & Anr. Respondents

Mr. R. F. Lambay, advocate for the applicant.

Mr. Y. S. Shinde, APP for the State.

AND

CRIMINAL REVISION APPLICATION No. 100 OF 1998

Union of India . . . Applicant

Vs.

M/s. Amortex Agencies Pvt. Ltd. and others . . . Respondents

Mr. R. F. Lambay, Advocate for the applicant.

Mr. U. V. Nikam, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : FEBRUARY 15, 2007.

P.C.

. Heard the learned counsel for the applicants. None present for the respondents. The matters are adjourned from time to time during last two weeks and repeatedly the matters were called, but none appeared for the respondents. Today also none appears for the respondents.

2. All these three Revision Applications may be disposed off by a common order, as same question of law is involved in them.

3. According to applicant - Union of India, respondent in Revision Application No. 327 of 1997, Respondent No.1 in Revision Application No. 98 of 1998 and in Revision Application No. 100 of 1998 had tried to evade the income tax. Therefore, on proposal from the concerned officer, the income tax Commissioner accorded sanction for their prosecution. Accordingly, the complaints came to be filed. The learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanado, Mumbai by an order dated 26-9-1997

discharged the said accused persons, on the ground that before according sanction for prosecution, The Commissioner had not issued any show cause notice to them and thus, they were deprived of an opportunity of being heard and also opportunity to compound the offence under S. 279 of the Income Tax Act. The learned Chief Metropolitan Magistrate relied on certain authorities from Bombay, Rajasthan and Calcutta High Courts. The order of discharge is challenged by the Union of India through Dy. Commissioner of Income Tax Department in these Revision Applications.

4. The learned counsel for the applicant contends that issuance of show cause notice before according sanction for prosecution is not necessary under the law, nor the accused has any right to compound the offence, though there is an enabling provision under S. 279(2) of the Income Tax Act, whereby Chief Commissioner or the Director General of the Income Tax may compound the offence either before or after institution of the proceeding. In support of this, the learned counsel placed

reliance upon **Union of India & Anr. Vs. Banwarilal Agarwal [(1998) Supreme Court Cases 652]**, wherein Their Lordships observed in paragraph 7 as under -

> . "We further find that sub-section (2) of Section 279 is a provision which enables the Chief Commissioner or the Director General to compound any offence either before or after the institution of proceedings. There is no warrant in interpreting this sub-section to mean that before any prosecution is launched, a show-cause notice should be given or an opportunity afforded to compound the matter. The enabling provision cannot give a right to a party to insist on the Chief Commissioner or the Director General to make an offer of compounding before the prosecution is launched."

5. Thus, the Supreme Court has settled the legal position and in view of this, it

must be held that there is no legal requirement to issue show cause notice to the accused, before according sanction for prosecution or before initiating the prosecution. On this ground, the prosecution could not be quashed. It may be pointed out that the impugned orders were passed by the Additional Chief Metropolitan Magistrate in the year 1997, while the Supreme Court judgment in **Union of India Vs. Banwarilal Agarwal** was rendered in October 1998. Therefore, the learned Additional Chief Metropolitan Magistrate did not have benefit of the judgment of the Supreme Court, and therefore, the learned Additional Chief Metropolitan Magistrate passed the order as per the view taken by this High Court, as well as Calcutta and Rajasthan High Courts. Anyhow, now the legal position is settled and therefore, it must be held that the accused persons cannot be discharged merely because show cause notice was not issued to them, prior to according sanction for prosecution or prior to launching prosecution. Therefore, the impugned orders are liable to be set

aside.

6. For the aforesaid reasons, the Revision Applications are allowed. The impugned orders discharging accused are hereby set aside. Matters are remanded back to the trial Court for proceeding as per law. The learned trial Court shall issue notices to the concerned accused persons. As all the offences are very old, trial Court is directed to expedite the hearing and dispose off the matters as early as possible.

Sd/-
[J. H. BHATIA, J.]